IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 3067 of 2002

Date of decision: March 28, 2007.

The Haryana State Electricity Board

...Appellant.

Vs.

R.D.Goyal, Sr. Accounts Officer.

....Respondent.

Present: Mr.C.B.Goel, Advocate with
Mr. Manoj Sharma, Advocate for appellant.

Mr. D.R.Bansal, Advocate for respondent.

JUDGMENT

M.M.Aggarwal, J.

Plaintiff R.D.Goyal, now respondent, had filed suit for declaration as against Haryana State Electricity Board. That suit was dismissed by Civil Judge (Junior Division), Hisar vide judgment dated 30.9.1996. On an appeal having been filed by the plaintiff, now respondent, the suit was decreed. This is now regular second appeal against that judgment of Addl. District Judge, Hisar dated 18.5.2000, decreeing the suit.

The law points involved in this case are as under:

1.Whether the plaintiff was entitled to the grant of pay in view of the

order dated 3.7.1989 which was admittedly passed by one member only, whereas he was not competent to pass such order, and only the Members of the Board could fix the pay of Accounts Officer who got premature promotion?

2. Whether plaintiff-respondent was entitled to the pay scale under the order dated 3.7.1989, which had been revoked vide Ex.PW1/11 as well as Ex.D-4?

The plaintiff was working as Senior Accounts Officer.

There were earlier judgments of Civil Judge Chandigarh dated 18.8.1987 and that of Additional District Judge, Chandigarh dated 20.2.1991 in favour of the plaintiff and effect of these judgments had already been given and pay fixed. Arrears along with interest were also paid. Then on 1.1.1991 plaintiff was drawing pay Rs.4375/-, but it was reduced to Rs.4250/- on 1.4.1991. According to the plaintiff, his pay was reduced without giving him opportunity to explain the position.

In the written statement filed on behalf of the respondent-Board, details of pay fixed has been given. Plaintiff was drawing Rs. 4375/- on 1.1.1991. As per calculation given, plaintiff was drawing Rs.600/- on 25.6.1974. His pay was increased to Rs.640/- as on 1.4.1975 due to instructions dated 3.7.1989. Then those instructions were withdrawn. The instructions dated 3.7.1989 read as under:

"i) The increment as accounts officer would be allowable on accrual basis retrospectively, but cash payment will flow to them from the date they completed the 5 years service as SAS accounts.

ii) The said benefit will also be applicable in case of those officers and staff who had been given pre-mature promotion i.e. before the completion of the requisite period of service on the post held prior to the promotion.

These instructions were withdrawn in terms of Board's Instructions dated 29.11.1991, which are as under:

1. The circular Memo No. Ch-156/GS-166 dt.3.7.1989 be withdrawn with prospective effect i.e. from the date of issue of orders meaning thereby that pay of the officers who have derived the benefit of the said circular in the matter of pay fixation be fixed downward from the said date (date of issue of orders) and the difference between the present pay and the pay which is re-fixed as a consequence of the proposed withdrawal of circular dated 3.7.1989 be treated as personal pay to be absorbed in the next annual increments so as to conform to the State Govt's /Board Instructions mentioned in

Memo dated 1.12.1977 read with Board's O./O No. 310/GS-266 dated 11.4.1991. This would obviate the immediate recovery of the excess amount from the concerned officers still inservice.

The appellate authority while accepting the appeal, had observed that no notice was given to the plaintiff before reducing his pay and no representation from the plaintiff was sought and, therefore, order reducing the pay was bad.

From perusal of the details of fixation of pay etc of the plaintiff, now respondent, reproduced in the written statement and reproduced also in the judgment of the trial Court, it would come out that plaintiff -respondent was drawing Rs.600/- as on 25.6.1974. Then on 1.4.1975 the pay was fixed at Rs.640/- after clarification/instructions dated 3.7.1989. Thereafter on 27.4.1975 the pay was again fixed at Rs.640/- and on 1.4.1976 it was Rs.680/-. After withdrawal of instructions the pay has been sought to be fixed as under:

On 25.6.1974 it was Rs.600/- then on 27.4.1975 it was to remain Rs.600/-. On 1.4.1976/27.4.1976 it was raised to Rs.640/-. The increment as such had been given on 27.4.1976 making it Rs.640/- and then pay fixed at Rs.680/- as on 1.4.1977. If all this is taken into account, then one increment will be less in due course . One would be entitled to an increment every year. When it was Rs.600/- in April 1974, then in April 1975 it would have been Rs.640/- and in the year 1976 it would be Rs.680/- and in 1977 it would be Rs.720/-, which had originally been the position.

Under these circumstances, even if instructions had been

withdrawn, the reduction of pay had been there without any explanation. When on 25.6.1974 it was Rs. 600/-, then if the pay was fixed at Rs.640/- as on 1.4.1975 due to instructions dated 3.7.1989, which were withdrawn even then plaintiff would have become entitled to an increment on 1.4.1975, further increment on 1.4.1976 another increment on 1.4.1977 and in that way also his pay would have been Rs.720/- and then ultimately it would be Rs.4375/- as on 1.1.1991.

Under these circumstances, there is no merit in this appeal and the same is dismissed.

(M.M.Aggarwal)
Judge

March 28, 2007
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